

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10) Civil No. 07-2041-LAB(LSP)
11 EXCEPTIONAL INNOVATIONS, LLC,)
12 Plaintiff,) NOTICE AND ORDER FOR EARLY
13 v.) NEUTRAL EVALUATION CONFERENCE
14 KONTRON AMERICA, INC.,.)
15 Defendant.

16 IT IS HEREBY ORDERED that an Early Neutral Evaluation of your
17 case will be held on December 19, 2007, at 9:00 AM before United
18 States Magistrate Judge Leo S. Papas, United States Courthouse,
19 Courtroom G, First Floor, 940 Front Street, San Diego, California.
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21 Pursuant to Rule 16.1(c) of the Local Rules of the United
22 States District Court for the Southern District of California, both
23 counsel and the parties who have full and unlimited authority¹ to

24 ¹ "Full authority to settle" means that the individuals at the settlement
25 conference must be authorized to fully explore settlement options and to
26 agree at that time to any settlement terms acceptable to the parties.
Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871 F.2d 648 (7th Cir.
27 1989). The person needs to have "unfettered discretion and authority" to
28 change the settlement position of a party. Pitman v. Brinker Intl., Inc.,
216 F.R.D. 481, 485-486 (D. Ariz. 2003). The purpose of requiring a
person with unlimited settlement authority to attend the conference
includes that the person's view of the case may be altered during the face
to face conference. Id. at 486. A limited or a sum certain of authority

1 negotiate and enter into a binding settlement shall appear in person
2 at the conference and shall be prepared to discuss the claims,
3 defenses and damages.

4 Unless there are **extraordinary circumstances**, persons
5 required to attend the conference pursuant to this Order shall not
6 be excused from personal attendance. Requests for excuse from
7 attendance for extraordinary circumstances shall be made in writing
8 at least 48 hours prior to the conference. Where the suit involves
9 the United States or one of its agencies, only counsel for the
10 United States with full settlement authority need appear. All
11 conference discussions will be informal, off the record, privileged
12 and confidential.

13 The parties may submit a short Confidential Early Neutral
14 Evaluation Conference Statement prior to the conference. The
15 parties are also encouraged to lodge with Magistrate Judge Papas'
16 chambers a chronology, setting forth a timeline of the factual
17 events that are the basis for the claims and defenses asserted in
18 this litigation. If submitted, the chronology should be in a chart
19 or column format with the column headings "DATE" and "EVENT" and may
20 be annotated with documents significant to the facts or issues.

21 In the event the case does not settle at the Early Neutral
22 Evaluation Conference, the parties shall also be prepared to discuss
23 the following matters at the conclusion of the conference.

24 1. Any anticipated objections under Federal Rule of Civil
25 Procedure 26(a)(1)(E) to the initial disclosure provisions of
26 Federal Rule of Civil Procedure 26(a)(1)(A-D);
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28 is not adequate. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th Cir.
2001).

1 2. The scheduling of the Federal Rule of Civil Procedure
2 26(f) conference;

3 3. The date of initial disclosure and the date for lodging
4 the discovery plan following the Rule 26(f) conference; and,

5 4. The scheduling of a Case Management Conference pursuant
6 to Federal Rule of Civil Procedure 16(b).

7 The Court will issue an appropriate order addressing these
8 issues and setting dates as appropriate.

9 **Plaintiff's counsel shall notify all Defendants of the date**
10 **and time of the Early Neutral Evaluation Conference.** Questions
11 regarding this case may be directed to the Magistrate Judge's
12 research attorney at (619) 557-6384.

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16 DATED: November 14, 2007

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Hon. Leo S. Papas
U.S. Magistrate Judge

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